

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:	)	
	)	
	)	
Laura Ann Toomey,	)	
	)	Case No. 14-48532-705
	)	Chapter 7
Debtor,	)	
	)	Debtor's Response to
	)	Trustee's Motion to Compel
Fredrich J. Cruse Trustee,	)	Turnover
	)	
Movant,	)	
VS.	)	
	)	
Laura Ann Toomey,	)	
	)	
Respondent.	)	
	)	

**DEBTOR'S RESPONSE TO MOTION TO COMPEL TURNOVER**

Comes now Debtor, Laura Ann Toomey, by and through her attorney, and responds to the Trustee's Motion to Compel Turnover, as follows:

1. Debtor admits the allegations and statements contained in paragraphs 1 through 4 of the Trustee's motion.
2. In response to paragraph 5 of the Trustee's motion, Debtor states that she and the undersigned Counsel respectfully disagree with the Trustee's determination and state that the tax refund in question is 100% attributable to the Debtor's non-filing spouse's withholdings as the Debtor had no tax withholding for the period in question. Pursuant to current 8<sup>th</sup> Circuit case law tax refunds that

are attributable to a non-filing spouse's withholdings are not property of the Bankruptcy Estate. See Carlson v. Moratzka (In re Carlson), 394 B.R. 491, 2008 Bankr. LEXIS 2295, Bankr. L. Rep. (CCH) P81,322, 60 Collier Bankr. Cas. 2d (MB) 487, 102 A.F.T.R.2d (RIA) 6156 (B.A.P. 8th Cir. 2008)

3. In response to paragraph 6 of the Trustee's motion, Debtor states that she and the undersigned Counsel have responded to all of the Trustee's requests and have been corresponding on a regular basis with the Trustee regarding this matter.

4. In response to paragraph 7 of the Trustee's motion, Debtor states that she has attempted to resolve the matter amicably with the Trustee but has been unsuccessful.

5. In response to paragraph 8 of the Trustee's motion, Debtor states that she has complied with all of the Trustee's requests for information and has provided all requested information to the Trustee.

WHEREFORE, Debtor prays that the Court deny the Trustee's Motion to Compel and for such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

Pontello Law, LLC

/s/Dominic Pontello  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Debtor's Response to Trustee's Motion to Compel, was mailed to all parties, WHO HAVE NOT BEEN ELECTRONICALLY NOTIFIED, including Debtor this 6<sup>th</sup> day of September, 2016.

/s/ Dominic Pontello

Fredrich J. Cruse, Trustee -via ECF only

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